

# SHERIFFA BEE v. HO AH LOKE

[A. C. J. (Spenser Wilkinson J.) February 24, 1955]

[Penang — Rent Assessment Board Reference  
No. 1 of 1954]

*Landlord and Tenant — Control of Rent Ordinance, 1948 — Rent Assessment Board — Whether order made by High Court upon a Summons-in-Chambers precludes Board from disallowing application for ejectment proceedings — Respondent not party to proceedings in High Court.*

This was a special case stated by the Rent Assessment Board for a decision as to whether an order made by the High Court upon a Summons-in-Chambers precluded the Board from disallowing the application of the applicant for leave to commence ejectment proceedings.

The proceedings by way of Summons-in-Chambers was made by the Receiver on his own behalf against the present applicant for a renewal of the lease and the respondent was not a party to the application or the order. As the only question before the Court then was the best practical course to be adopted for the benefit of the estate and the beneficiaries, and as none of the parties then wished the Receiver to continue negotiations the Court gave effect to the views of all parties and refused the application of the Receiver to renew the lease.

Held: (1) the order of the High Court did not purport to (and indeed in the state of the parties before it could not) decide upon the respective legal rights of the lessor and lessee and it did no more than refuse to make a specific order upon the Receiver to "renew" a lease, which upon the material available, might or might not in law have already been renewed; (2) since the respondent was not a party to the proceedings in the High Court, the Board could not be bound by that order in proceedings between the present applicant and respondent nor could the respondent be in any way prejudiced by such order.

## SPECIAL CASE STATED.

H. E. P. P. Powell for the applicant.

R. Ramani (Ng Ek Teong and Lim Cheng Poh with him) for the respondent.

Cur. Adv. Vult.

Spenser Wilkinson J. : — This was a special case stated by the Rent Assessment Board under the provisions of the Control of Rent Ordinance, 1948.

The question of law that arises for decision is whether an order made by the High Court upon a Summons-in-Chambers in Suit No. 179 of 1936 precluded the Board from disallowing the application of the applicant, Sheriffa Bee for leave to commence ejectment proceedings against Ho Ah Loke in respect of the Odeon Cinema.

The Board itself raised this point during the course of the proceedings before it and invited argument from Counsel on both sides thereon. The following paragraphs from the case stated indicate the arguments then adduced :—

"6. The Board accordingly considered at this stage that it was proper that the point of law involved should be reserved for consideration by the High Court under Section 10 of the Ordinance, and the applicant and respondent were invited to make submissions on the opinion of

the Board. The Counsel for the respondent held that the application made by way of Summons-in-Chambers No. 418/51 was made by the Receiver on his own behalf, and that the respondent was not a party to the application or the order.

7. He quoted from the notes of the hearings of the Summons-in-Chambers No. 418/51, and showed that an attempt was made to negotiate suitable terms and conditions for the renewal of the lease—holding that the decision of the Honourable Judge did not expressly forbid the respondent from exercising his option to renew the lease if suitable terms could subsequently be agreed between the parties, but merely accepted the fact that the beneficiaries could not at that stage agree to the renewal of the lease.

8. The Counsel for the applicant did not agree and pointed out that in the affidavits produced at hearings before the Honourable Judge, the respondent admitted his failure to fulfil the obligations of the lease during the period of his five year tenancy which therefore precluded him from exercising his option to renew it."

As a matter of law I am inclined to think that whatever might be the correct interpretation of the order of the High Court in question the respondent not having been a party to those proceedings the Board could not be bound by that order in proceedings between the present applicant and respondent, nor could the respondent be in any way prejudiced by such order.

However this may be, the Board found itself in difficulty with regard to this order and although the applicant had been a party to the whole of the proceedings in Chambers before the High Court it was not pointed out to the Board that during the various hearings in Chambers in the High Court no question of law was at any time during those proceedings either argued or decided. The possibility that the tenant's option to renew had been validly exercised giving a right of specific performance to the lessee; that there might have been breaches of covenant by the lessee; that some or all of such breaches (if any) might have been waived; or that the lessee might be able to invoke the provisions of the Control of Rent Ordinance—all these questions necessarily formed the background to the various arguments adduced. But the only question actually before the Court for decision was the question of the best practical course to be adopted for the benefit of the estate and the beneficiaries. When it transpired at the final hearing that at that stage none of the parties wished the Receiver to continue negotiations with the lessee the Court simply gave effect to the views of all parties and refused the application of the Receiver to renew the lease.

I think it is clear from a study of the notes of arguments in Chambers that a certain ambiguity arose in the use of the word "renewal". If the lessee's option had in fact been validly exercised then the lease was already continuing. The word "renewal" was really used throughout as referring to a fresh lease upon new terms.

I think there can be no doubt that the order of the High Court did not purport to (and indeed in the state of the parties before it could not) decide upon the respective legal rights of the lessor and lessee and that it did no more than refuse to make a specific order upon the Receiver to "renew" a lease, which, upon the material available, might or might not in law have already been renewed.

I am clearly of the opinion, therefore, that the Board is free in these proceedings to decide the questions before it entirely unfettered by any order made in Suit No. 179 of 1936.

With regard to costs, I am of the opinion that had the applicant, when the Board raised this question, acceded to the views put forward by the respondent this special case would not have been necessary. In view of the fact, which I have already mentioned, that the applicant was a party to the proceedings in Chambers in the High Court it should have been clear to the applicant that the respondent's view was the correct one, and the Board should have been informed accordingly. Moreover, the applicant argued the case before me on the same basis as before the Board and has been unsuccessful. I am of the opinion, therefore, that the costs should follow the event and that the costs of these proceedings in the High Court should be taxed and paid by the applicant to the respondent, and there will be an Order to this effect.

*Order accordingly.*

Solicitors: *H. E. P. Powell & Co.; Pillai, Lim, Lee & Hwang.*

**NG SIEW ENG & ANOR.  
v. LOH TUAN WOON**

[O. C. J. (Whitton J.) March 24, 1955]

[Singapore—Suit No. 1005 of 1954]

*Negligence—Contributory negligence—Breach of statutory duty—Road Traffic Ordinance, 1941, s. 75—Toll-bar across mouth of side-road.*

The facts in this case were that on May 24, 1953, shortly after dark one Tay Kim Peng was riding a motor cycle with one Goh Lye Yong as pillion rider along a side road through Bukit Sembawang Estate towards Jurong Road when he collided with an iron bar placed across the mouth of the side road by the defendant for the purpose of collecting toll, and incurred injuries from which he died soon afterwards. The learned Judge at the trial also found: (1) there were red reflectors fixed on the bar, one showing in either direction; and (2) the iron bar was normally kept down until 9 or 10 p.m. The plaintiffs who were the personal representatives of the deceased claimed that the defendant in placing the bar across the road at the time of the accident was negligent and also acted in breach of the statutory duty imposed on him by s. 75 of the Road Traffic Ordinance, 1941.

Held: (1) in placing a reflector on the bar the defendant had performed in the circumstances of this case all that the law required of him as far as licensees were

concerned; (2) the deceased in this case failed to exercise due care for his own safety, and this was the substantial cause of the accident; (3) damages can be recovered for the breach of the statutory duty imposed by s. 75 of the Road Traffic Ordinance, 1941 but in this case the negligence of the deceased defeated the plaintiffs' claim as the deceased's negligence was the substantial cause of the accident.

*Cases referred to:—*

- (1) *Wingrove v. Prestige & Co. Ltd.* (1953) 1 W.L.R. 449, 454.
- (2) *Cutler v. Wandsworth Stadium Ltd.* (1948) 1 K.B. 291, 298.
- (3) *Monk v. Warbey* (1935) 1 K.B. 75.
- (4) *London Passenger Transport Board v. Upson & Anor.* (1949) A.C. 155.
- (5) *Caswell v. Powell Duffryn Associated Collieries Ltd.* (1940) A.C. 152.

**CLAIM for Damages.**

*Dennis Murphy* for the plaintiffs.

*T. T. Rajah* for the defendant.

*Cur. Adv. Vult.*

**Whitton J.:**—On the 24th May 1953 shortly after dark the first plaintiff's husband, Tay Kim Peng, was riding a motor-cycle with one Goh Lye Yong as pillion-rider along a side-road through Bukit Sembawang Estate towards Jurong Road when he collided with an iron bar placed across the mouth of the side-road for the purpose of collecting toll, and incurred injuries from which he died soon afterwards. Toll had been collected for some years previously at that place by the defendant in accordance with an agreement between him and the Bukit Sembawang Rubber Company whereby he was authorised to collect the sums of \$2 and \$1 per trip for respectively lorries and motor-cars using the side-road, and in return undertook to keep the road in good condition. These facts are not in dispute.

There are, however, two questions of fact which have been strongly contested. Firstly the plaintiffs allege that a red reflector was placed for the first time on the iron bar shortly after the accident on the same night, while the defendant asserts that from the time the bar was originally fixed there were reflectors, one showing in each direction, attached to it. Secondly the plaintiffs allege it had been the practice up to the day of the accident to raise the bar about 7 o'clock each evening, and that only since then has it been kept down until 9 or 10 p.m., which is admittedly the present arrangement, while the defendant maintains it has always remained down until 9 or 10 o'clock.

As to a reflector, at least six Chinese witnesses for the plaintiffs testified there had never been a reflector on the bar before the accident, while three called for the defence supported the defendant in affirming there